

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-379-C - ORDER NO. 2009-665
SEPTEMBER 24, 2009

IN RE: Application of Cincinnati Bell Any Distance,) ORDER APPOINTING
Inc. for a Certificate of Public Convenience) HEARING EXAMINER
and Necessity to Provide Resold Local)
Exchange Services and for Flexible)
Regulation of its Local Exchange Services)

This matter comes before the Public Service Commission of South Carolina (the Commission) on Motion of the Commission Staff to appoint B. Randall Dong, Esquire, as a “hearing examiner” for a hearing regarding the Application filed by Cincinnati Bell Any Distance, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold Local Exchange Services. Mr. Dong would hear the evidence in the case without the presence of the Commission. We grant the Motion.

S.C. Code Ann. Section 58-9-1020 (1976) allows the Commission to employ a special agent or examiner in a telecommunications hearing. This person may administer oaths, examine witnesses, and receive evidence in any locality which the Commission may designate. The examiner may not be used in a telephone rate proceeding under the statute. We note that the present proceeding is not a telephone rate proceeding.

Further, 26 S.C. Code Ann. Regs. 103-841 (1976) states that when evidence is to be taken in a formal proceeding before the Commission, any Commissioner or any hearing examiner designated by the Commission may preside at the hearing. The presiding officer has the duty to conduct full, fair, and impartial hearings under Section B

of the Regulation. Section C of the Regulation requires that the presiding officer mail to the parties of record a proposed Order when a majority of the Commissioners do not hear a formal proceeding or read the record thereof. The proposed Order shall contain a statement of facts relied upon in formulating such Order and each issue of fact or law necessary to it. The Regulation then describes a mechanism for the parties to take exception to the proposed Order and ultimately states, among other things, that the Commission will issue the final Order in the case based upon the record, the proposed Order, and other materials and any oral arguments that may take place. We believe that this Regulation describes the appropriate procedure for Mr. Dong to employ as a hearing examiner in the present case.

Mr. Dong, a licensed attorney since 1990, is a staff attorney to the Commission and has been employed in that position since 2006. We believe that Mr. Dong has the ability and knowledge to properly carry out the hearing examiner's role in this case, and we therefore grant the Motion appointing him as hearing examiner.

In accordance with the preceding paragraphs, we make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. S.C. Code Ann. Section 58-9-1020 (1976) allows the Commission to employ a special agent or examiner in non-rate telecommunications hearings.
2. The present proceeding is not a telephone rate proceeding.
3. 26 S.C. Code Ann. Regs. 103-841 (1976) allows a hearing examiner designated by the Commission to preside at a hearing. This Regulation sets out the duties

and procedures to be employed by that examiner. These duties and procedures should be employed in the present case.

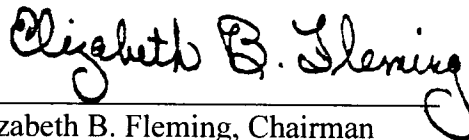
4. Mr. Dong has the ability and knowledge to act as a hearing examiner in the present case.

5. Mr. Dong should be appointed as the hearing examiner in this case.

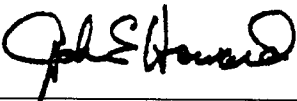
ORDER

The Commission hereby appoints B. Randall Dong, Esquire as the hearing examiner in the present case. Mr. Dong shall follow all applicable statutes and regulations that may pertain to his appointment. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Elizabeth B. Fleming, Chairman

ATTEST:



John E. Howard, Vice Chairman
(SEAL)